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To: Mr. William Helgeson
Fax Phone: 415-841-4125
From: Ernest T. Sanchez, Esq.
Subject: NAB Public File Memo

Bill,

Attached is the NAB memo.

Ernie

Ernie

<u>Federal Communications Commission</u>	
Docket No. <u>04791</u>	Exhibit No. <u>11</u>
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**COUNSEL MEMO FROM
THE LEGAL DEPARTMENT**

Your Public File — What to Keep, What to Toss and Where to Keep It

Maintaining the public inspection file is an important task for licensees. FCC enforcement of this rule is alive and well. Additionally, with the revised FCC forfeiture policy placing a \$10,000 fine on violation of the public file rules, broadcasters should review the rules to assure compliance.

The Commission issued a *Notice of Proposed Rule Making* in May 1997, that proposed to relax the public inspection file rules to allow stations to locate the public file at the main studio, wherever located. NAB recommended that the FCC adopt the proposal. Additionally, the *NPRM* asked for comment regarding various public file retention periods and clarification of required documents. The *NPRM* reply comment deadline was September 8, 1997, which means the Commission could act on its proposal at any time.

Until the FCC issues a *Report and Order* that modifies the public inspection file rules, the current location, content requirements and retention periods remain in effect. Below is a synopsis of the public inspection file rules.

LOCATION

A station's public file must be located within the community of license — either at the main studio within or an "accessible place" within the community. A station can locate the public file at a main studio outside of the community of license if a waiver of the rule was granted to the licensee prior to July 16, 1987. The file must be available for public inspection at any time during regular business hours.

RECORDS TO BE MAINTAINED/RETENTION PERIODS

The following chart outlines the required public file documents, the applicable retention period and the relevant FCC rule number.

DOCUMENT	RETENTION PERIOD	FCC RULE
Letters from the Public (Commercial stations only) [See NOTES below]	3 years	§ 73.1202 and § 73.3526(a)(7)
Political Material [See NOTES below]	2 years	§ 73.1943; § 73.3526(a)(4) and § 73.3527(a)(4)

Renewal Application (FCC Form 303-S)	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(1) and § 73.3527(a)(1)
Quarterly Issues/Program Lists [See NOTES below]	Term of license (eight years)	§ 73.3526(a)(8)(i) [TV]; § 73.3526(a)(9) [Radio] and § 73.3527(a)(7) [Nonexempt noncommercial educational stations]
Certification of compliance with renewal announcements	As long as the underlying application to which it refers	§ 73.3526(a)(10) and § 73.3527(a)(9)
Applications for new construction permit (FCC Form 301), amendments and FCC correspondence pertaining thereto, including Initial Decision and Final Decision (if any).	As long as the application is pending before the FCC or courts. If application is granted, retain for one license term (8 years) or until the grant of the first renewal, whichever is later.	§ 73.3526(a)(1) and § 73.3527(a)(1)
Application for changes to existing stations (FCC Form 301), amendments and FCC correspondence pertaining thereto, including Initial Decision and Final Decision (if any).	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(1) and § 73.3527(a)(1)
Application for transfer or assignment of license (FCC Form 314, 315 or 316), and all supporting documents pertaining thereto.	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(2) and § 73.3527(a)(2)
Application requesting extension of time to construct a new station (FCC Form 701), and all supporting documents pertaining thereto.	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(2) and § 73.3527(a)(2)

Annual Employment Reports (FCC Form 395-B), and all supporting documents pertaining thereto.	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(5) and § 73.3527(a)(5)
Statements regarding the filing of petitions to deny against station applications with the name and address of the party filing the petition.	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(1); § 73.3526(a)(2); § 73.3527(a)(1) and § 73.3527(a)(2)
Annual Ownership Reports (FCC Form 323), and other ownership related documents [See NOTES below]	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(3) and § 73.3527(a)(3)
Citizen's Agreements [See NOTES below]	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(1)
List of donors supporting specific programs (Noncommercial stations only)	2 years	§ 73.3527(a)(8)
LMA/Time Brokerage Agreements (Radio only) [See NOTES below]	For the duration of the agreement	§ 73.3526(a)(12)
Applications pertaining to changes in program service, and all supporting documents pertaining thereto.	Period beginning with date tendered for filing and ending with the expiration of one license term (8 years) or until the grant of the first renewal application, whichever is later.	§ 73.3526(a)(2) and § 73.3527(a)(2)
Children's Television commercial limit certification (Commercial TV only) [See NOTES below]	Term of license (8 years)	§ 73.3526(a)(8)(ii)

Children's Television Programming Reports (Commercial TV only) [See NOTES below]	Term of license (8 years)	§ 73.3526(a)(8)(iii)
Procedural Manual ("The Public and Broadcasting") [See NOTES below]	NO LONGER ENFORCED	
National Television Network Affiliation Agreement (TV only)	Duration of the Agreement	§ 73.3613
Retransmission/Must Carry Election Statement (Commercial TV only)	For the three years the election statement is in effect.	§ 73.3526(g)
Engineering material pertaining to a former mode of operation	3 years after operation under new or modified mode commences	§ 73.3526(e)(2)(i) and § 73.3527(e)(2)(i)
Engineering material pertaining to claim against station or relation to FCC complaint	Until notified in writing that it may be discarded	§ 73.3526(e)(2)(ii)

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NOTES

Any materials relating to an FCC investigation or complaint must be retained until the licensee is notified by the Commission in writing that the material may be discarded.

"Letters from the Public" include all written comments and suggestions received from the public regarding operation of the station. The letter need not be retained in the public file if the writer has requested the letter not be made public or if the letter is defamatory or obscene. TV licensees must separate "programming" and "non-programming" letters. Additionally, TV licensees are required to maintain all letters relating to violent programming in the public file.

"Political Material" required to be kept in the political file includes:

- (a) A complete record of all requests for airtime by or on behalf of candidates, with a notation showing how each request was handled (including charges);
- (b) Any free political time given to legally qualified candidates for public office;
- (c) A list of chief executive officers of any organization that sponsors or supplies information for political programs or for programs containing controversial issues of public significance.

See NAB's "Political Correctness," 14th Edition, for further information regarding political file requirements.

"Quarterly Issues/Program Lists" are comprised of programs in which the station has given significant treatment to specific community issues during the preceding 3-month period. The list should

be placed in the public file by January 10, April 10, July 10 and October 10, each year. The list should include:

- (1) The issues examined and a discussion of how each matter was addressed;
- (2) Time, date and length of each program;
- (3) Program title;
- (4) Type of program (i.e. news interview, call-in, documentary, etc.); and
- (5) Guests on the program.

"Supporting documents" include:

- (a) Letters and exhibits;
- (b) Amendments to the application;
- (c) Correspondence between the FCC and the applicant concerning the application;
- (d) Documents mentioned in the application; and
- (e) Service contour maps and data showing the main studio and transmitter sites.

Other "ownership related documents" include:

- (a) Letters and ownership information filed with the FCC;
- (b) Supporting materials pertaining to ownership control of the license;
- (c) Management agreements with independent contractors or with employees, if the employee agreement involves revenue sharing;
- (d) Contracts or other documents relating to ownership or control of the license.

A **"Citizen Agreement"** is a written agreement between a broadcast applicant, permittee or licensee and one or more citizens or citizen group that is entered into for primarily noncommercial purposes. This definition generally includes agreements that deal with goals or proposed practices affecting station operation in the public interest. It excludes common commercial agreements such as advertising contracts; union, employment, and personal service contracts, network affiliation, syndication, program supply contracts, etc.

A **"Time Brokerage Agreement"** is the sale of discrete blocks of time by a licensee to a broker who supplies the programming to fill that time and sells the commercial spot announcements in it. Time brokerage agreements executed after September 16, 1992, must be placed in the public file and filed with the Commission within 30 days after they are executed. Both stations must keep the agreements. Confidential proprietary information may be edited out before the agreement is placed in the public file, but the entire document must be made available to the FCC upon request. For more information regarding Time Brokerage Agreements or LMAs contact the NAB Legal Department at (202) 429-5430.

Children's Television commercial limits and Children's Television rules: See, NAB's Counsel Memo, *"The Children's Television Rules."* Available at <http://www.nab.org/Television/tvkidrules.html> or by calling NAB Legal Department at (202) 429-5430.

The **Procedural Manual**, "The Public and Broadcasting," is no longer required to be kept in the public file until the Commission publishes a revised manual.

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AVAILABILITY OF PUBLIC FILE CONTENTS

A station's public file must be made available for inspection during regular business. For example, if a station's business office is open from 9:00 a.m. to 5:00 p.m., the public file must be available for inspection during these hours.

Station personnel may request personal identification (names and addresses) of any person asking to see the public file but cannot require that the person tell if he/she is affiliated with any organization. Nor is a station permitted to require members of the public to stipulate which documents they wish to examine.

A station must make copies of documents in the public file for anyone willing to pay "reasonable costs" for reproduction. The copies must be made available within seven days of the request, unless reproduction facilities are unavailable in the city of license.

Material that is voluntarily kept after the required retention period may be kept in a form and place convenient to the licensee. However, the material shall still be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee.

A station must honor any requests for inspection of the public file made in person. However, if the request is made by mail or by phone, the station is free to determine whether it wishes to comply with the request. Additionally, the public file must be located in a place that is easily accessible to persons with disabilities.

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NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcasting industry. Broadcasters seeking information on how principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.

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